

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RENITA A. JOHNSON-LEVA,

Plaintiff-Appellant,

v

BIOPORT CORPORATION,

Defendant-Appellee.

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UNPUBLISHED

April 11, 2006

No. 258622

Ingham Circuit Court

LC No. 03-002183-NZ

Before: Kelly, P.J., Jansen and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the circuit court denying her amended application to review and correct the arbitration award rendered in this matter. We affirm.

Plaintiff was terminated from her employment with defendant, and she filed a demand for arbitration, alleging the following: (1) wrongful discharge based on defendant's breach of the express employment contract between the parties; (2) wrongful discharge based on a violation of the law and public policy; (3) wrongful discharge based on a theory of legitimate expectations/promissory estoppel; (4) violations of the Elliott-Larsen Civil Rights Act (ELCRA), including intentional and disparate discriminatory treatment, a hostile work environment based on gender, and retaliation; and (5) tortious interference. Plaintiff's wrongful discharge claim based on a theory of legitimate expectations/promissory estoppel, and the tortious interference claim were dismissed before arbitration. The matter was arbitrated for five days, and after review of the extensive testimony, exhibits, and briefs submitted by the parties, the arbitrator rendered a written decision, finding for plaintiff. The arbitrator concluded that, because plaintiff had not been terminated for cause as required under the employment agreement, she was entitled to damages, as well as a bonus payment and interest. The arbitrator, however, concluded that plaintiff's ELCRA claims were not supported by the evidence because she failed to show that either her termination or the alleged hostile work environment were based on her gender, and she also failed to show that her termination was in retaliation for her complaints of gender discrimination. Plaintiff challenged the arbitrator's decision, and the circuit court confirmed the arbitrator's opinion and award.

Plaintiff first argues that the trial court erred in confirming the arbitrator's award because the arbitrator exceeded his authority, thus committing errors of law, in two ways: (1) by disregarding the express, unambiguous terms of the parties' contract and (2) by failing to make the required findings of fact and conclusions of law in his decision regarding plaintiff's ELCRA

claims. We disagree with both of plaintiff's assertions of error. We review a trial court's decision to enforce an arbitration award de novo. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003).

If an agreement to arbitrate states that a judgment of any circuit court may be rendered on the arbitrator's award, then it is considered a statutory arbitration. See *Beattie v Autostyle Plastics, Inc*, 217 Mich App 572, 578; 552 NW2d 181 (1996). Here, the parties' employment agreement stated that "judgment may be entered on the arbitrator's award in any court having jurisdiction thereof." Therefore, this is a statutory arbitration.

MCR 3.602 governs judicial review and enforcement of statutory arbitration agreements. MCR 3.602(A); MCL 600.5021; *Brucker v McKinlay Transport, Inc*, 454 Mich 8, 17-18; 557 NW2d 536 (1997). Once an issue is submitted to arbitration, the uniform arbitration act and MCR 3.602 limit judicial review. *DAIIE v Sanford*, 141 Mich App 820, 824-826; 369 NW2d 239 (1985). Although our Supreme Court has rejected the theory that arbitration awards are unreviewable, *DAIIE v Gavin*, 416 Mich 407, 428-429; 331 NW2d 418 (1982), it is clear that Michigan public policy favors arbitration to resolve disputes. *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 127-128; 596 NW2d 208 (1999). Therefore, judicial review of arbitration awards is strictly limited by statute and court rule. *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999). By limiting the grounds on which an arbitration decision may be invaded, the court rules "preserve the efficiency and reliability of arbitration as an expedited, efficient, and informal means of private dispute resolution." *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991).

Further, our Supreme Court has stated that "[i]t is only the kind of legal error that is evident without scrutiny of the intermediate mental indicia which remains reviewable . . . ." *Gavin, supra*, at 429. In addition, an allegation that an arbitrator has exceeded his powers must be carefully evaluated so that the claim is not used as a ruse to induce the appellate court to review the merits of the arbitrator's decision. *Gordon Sel-Way, supra* at 497. "[C]ourts may not substitute their judgment for that of the arbitrators . . . ." *Id.* And in cases where the arbitrator's alleged error can be equally attributed to allegedly "unwarranted" factfinding" and an asserted error of law, the award should be upheld because the alleged error of law cannot be shown with the requisite certainty to have been the essential basis of the arbitrator's findings, and an arbitrator's factual findings are not subject to appellate review. *Gavin, supra* at 429.

There are two ways a reviewing court can find that an arbitrator exceeded his powers requiring vacation of an arbitration award. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 176; 550 NW2d 608 (1996). First, because an arbitrator derives his authority from the arbitration agreement, he is bound to act within the terms of that agreement. *Id.* Thus, if an arbitrator acts beyond the material terms of the parties' arbitration agreement, he exceeds his powers. *Id.* Second, an arbitrator also exceeds his powers if he acts in contravention of controlling principles of law. *Id.*

Plaintiff first alleges that the arbitrator exceeded his powers when he disregarded the express terms of the employment agreement, thereby making a different contract for the parties. Plaintiff refers this Court to the following language of the parties' contract:

In addition, employment under this Agreement may be terminated by the Company (acting through its Board) or by the Employee under the following circumstances. . . .

Plaintiff asserts that the face of the arbitration award clearly shows that the arbitrator ignored the plain and unambiguous language of the contract requiring board action to terminate an employee. We disagree. It is not clear from the face of the award that the arbitrator ignored the plain, unambiguous language of the contract. To the contrary, the arbitrator quotes directly from the contract when determining whether plaintiff was terminated from her employment in violation of this contractual language.

Further, contrary to plaintiff's assertion, the arbitrator did not err when he engaged in fact-finding to determine whether the board took action to terminate plaintiff. Although plaintiff contends that fact-finding on the issue of termination was unnecessary because there was clearly no board action regarding her termination, we conclude that the arbitrator's fact-finding was both required and proper because the phrase "acting through its Board" was not defined within the parties' contract. Therefore, the arbitrator was required to review defendant's conduct and determine if it constituted board action. The arbitrator did just that—he looked to defendant's actions and determined that plaintiff was terminated by the board. He relied on the following to support his decision: (1) the individual that made the decision to terminate plaintiff, Mr. Kramer, was a member of the board of directors; (2) Kramer consulted with a majority of the board before terminating plaintiff; (3) as president, Kramer was authorized by the board to make personnel decisions; and (4) the parties' agreement does not require a formal board resolution to terminate an employee. The arbitrator's well-reasoned decision was based on factual findings, which are not reviewable by this Court, *Gordon Sel-Way, supra* at 497, as well as contractual interpretation, which is also reserved for the arbitrator. *Konal, supra* at 74.

Turning now to plaintiff's second alleged error, she argues that the arbitrator erred when he failed to make findings of fact and conclusions of law regarding her ELCRA claims, as required under *Rembert, supra* at 165. Although we agree with plaintiff that *Rembert* requires arbitrators to make findings of fact and conclusions of law for the purpose of judicial review of ELCRA claims, it is clear from the face of the award that the arbitrator made the requisite findings of fact and conclusions of law. Therefore, we conclude that plaintiff's second allegation of error is without merit.

Finally, plaintiff argues that the trial court erred in refusing to release the funds that were deposited with the trial court to satisfy the arbitration award. Plaintiff contends that the trial court lacked the authority to hold the funds once plaintiff appealed to this Court. Our resolution of this appeal, however, renders this issue moot and we need not address it. *Detroit Edison Co v Michigan Public Service Commission*, 264 Mich App 462, 474; 691 NW2d 61 (2004), citing *Eller v Metro Industrial Contracting, Inc*, 261 Mich App 569, 571; 683 NW2d 242 (2004). We further note that plaintiff has failed to support this argument by citation to any authority and,

thus, has abandoned this issue by failing to properly address its merits. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Kathleen Jansen

/s/ Michael J. Talbot